Supreme Court, U.S.
FILED

10-361 SEP 14 2010

OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

XIUYING ZHENG,

Petitioner,

v.

ERIC H. HOLDER, JR.,
United States Attorney General,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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September 14, 2010

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QUESTION PRESENTED

Did the Second Circuit Court of Appeals deny petitioner her fundamental rights to due process under the Fifth Amendment by affirming the decision of the Board of Immigration Appeals in an egregious departure from the accepted and usual course of judicial proceedings?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Xiuying Zheng asks that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

CITATION TO OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit, *Xiuying Zheng v. Eric H. Holder, Jr., Attorney General of the United States*, Docket No. 09-0748 (2d Cir. 2010), issued by granting Respondent's motion for summary denial, is attached to this petition as **Appendix A**. The agency opinions issued by the Immigration Judge, then adopted and affirmed by the Board of Immigration Appeals, *In re Xiuying Zheng*, No. 099-683-205 (Immigration Judge March 13, 2007) (BIA February 5, 2009), are attached hereto as **Appendices B and C**.

STATEMENT OF JURISDICTION

The Court of Appeals for the Second Circuit entered its judgment denying the timely submitted petition for rehearing on May 18, 2010. The Court of Appeals denied Zheng's timely motion to reconsider on June 16, 2010. A copy of said decision is attached hereto as **Appendix D**. This Honorable Court's jurisdiction is hereby invoked pursuant to 28 U.S.C. § 1254, as the decisions below served to deprive Mr. Zheng of his rights as granted under the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Central to the matter *sub judice* are the Fifth Amendment rights granted to aliens seeking relief from the Courts of the United States, which Amendment states, in pertinent part, that "No person...shall be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

The Second Circuit Court of Appeals' decision is arbitrary, capricious and lacks support within the ambits of its own precedential decisions and as such is a clear violation of Ms. Zheng's Fifth Amendment rights. A concise statement of the case's history and underlying facts is herein provided so as to set forth the grave repercussions of the decisions below.

Ms. Zheng, is a native and citizen of the People's Republic of China (hereinafter "China"), who fled China and arrived in the United States on January 10, 1999. Ms. Zheng fears that she will be sterilized and fined if forced to return to China, due to giving birth to three children in violation of China's coercive birth control policy. Ms. Zheng was born in China on May 28, 1974. Ms. Zheng married her husband on May 31, 2000. Id. Ms. Zheng's first child, Steven Zhao, was born on October 19, 2000, in Chicago; her second child, Vivian Zhao, was born on February 5, 2003, in Chicago; and her third child, Victoria Zhao, was born on March 6, 2006, in New York. Id. Ms. Zheng did not file for asylum after the birth of her second child because she did not have the time to begin the process due to the fact that she had to care for her two

children on her own. After the birth of her third child, her mother came to the United States and began assisting her with caring for the children, which gave her time to retain an attorney and file a claim for political asylum, withholding of removal and relief under the Convention Against Torture (hereinafter, "CAT").

The IJ pretermitted Petitioner's application for asylum because the application was not filed within one year of her entry into the United States, finding that the explanation she provided did not fall within the statutory exceptions. However, the IJ did find that Petitioner met the burden of proof for withholding of removal, and therefore granted such relief to the Petitioner. The IJ concluded that Petitioner has a well founded fear of being sterilized if returned to China based on her testimony, supporting evidence, affidavits, and the background documents contained in the record.

Ms. Zheng maintains a well founded fear that she will be forced to undergo a sterilization procedure if forced to return to China. Her fear is legitimated by the widespread perpetration of such human rights violations by the Chinese government, in its efforts to enforce its barbaric birth control regulation. The persecution of individuals such as Ms. Zheng, namely individuals whose political opposition to the family planning regulation is well known to the government as a result of their repeated violation of the same, is well documented by the evidence in the record and forms the basis of her well founded fear that she will be severely persecuted if forced to return to China.

In spite of Ms. Zheng's compelling case for withholding of removal, the Board of Immigration Appeals reversed the decision of the Immigration Judge. This reversal was upheld by the Second Circuit Court of Appeals when they granted Respondent's motion for summary denial of the petition for review.

REASONS FOR GRANTING THE PETITION

The Second Circuit's decision in this case was an egregious departure from the accepted and usual course of judicial proceedings.

A. Summary Disposition Was Not Appropriate In This Case Because Petitioner Provided Evidence Sufficient To Meet The Test Provided in the Second Circuit Decision In Shao v. Mukasey.

The Second Circuit's Decision in *Shao v. Mukasey*, 546 F.3d 138, 143 (2d Cir. 2008) affirmed the holdings of the Board of Immigration Appeals in *Matter of J-H-S-*, 24 I. & N. Dec. 196 (BIA 2007); *Matter of J-W-S-*, 24 I. & N. Dec. 185 (BIA 2007); and *Matter of S-Y-G-*, 24 I. & N. Dec. 247 (BIA 2007). The common question addressed in these cases is: under what circumstances can a Chinese national rely on the birth of more than one child to demonstrate the well-founded fear of persecution necessary to qualify for asylum as a refugee? The Second Circuit, in *Shao*, held that Respondent did not meet her burden of demonstrating an objectively reasonable fear of persecution, and that a case-by-case review is necessary.

In the instant matter, granting Respondent's motion for summary denial was in error, as the

entirety of this Second Circuit's decisions was that "Petitioner's arguments are foreclosed by this Court's decision in *Shao v. Mukasey*, 546 F.3d 138 (2d Cir. 2008)." See **Appendix A**.

The Second Circuit's finding that Petitioner's arguments be foreclosed by *Shao* is in contradiction to its own finding that a case by case review is necessary. In addition, this is a case in which withholding of removal was granted by the Immigration Judge. Clearly, where a case by case analysis is necessary and where the Immigration Judge concluded that Petitioner has met her burden for withholding of removal, summary affirmance was not appropriate, since it cannot be fairly said that this petition for review lacks an arguable basis in law or fact. *See Pillory v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995)

The three part analysis created in these precedential decisions states that it must be determined 1) whether there is objective evidence supporting the fear of future persecution (proof of the details of the family planning policy relevant to each individual case; 2) whether the facts in the record establish that the alien violated the policy applicable to his circumstances; and 3) whether it is established that the violation of the family planning policy would be punishable in the local area in a way that would give rise to an objective fear of future persecution.

In the instant case, Petitioner has satisfied this three part analysis because 1) she submitted objective evidence of the existence of a local family planning policies; 2) she submitted proof that she violated the policy by giving birth to three children; and 3) she established that the violation would be punished in her

local area in a way which would give rise to an objective fear of future persecution, by providing evidence that violators in her local area have been sterilized.

Petitioner and her husband are both Chinese citizens and have no legal status here in the United States, which means that if Petitioner was forced to return to live in China with her three children, they *will* be counted for family planning purposes and she will be severely punished and sterilized for violating the policy. This is clearly stated in the 2005 China Profile Report issued by the United States Department of State on page 29, second paragraph under subsection D which states:

> **Generally unless one of the parents is an 'overseas Chinese' (i.e. has residency rights in another country), a family with a U.S. born child or children receives no special treatment under family planning laws.**

Therefore, based on the supporting evidence in the record, Petitioner satisfied all three parts of the analysis and demonstrated a fear of persecution that is both subjectively genuine and objectively reasonable.

B. Petitioner Met Her Burden Of Proof And Qualifies For Withholding Of Removal Because It Is More Likely Than Not That She Will Be Persecuted If Forced To Return To China.

The Second Circuit erroneously upheld the Board of Immigration Appeals' reversal of the Immigration Judge's determination that the Petitioner did meet her

burden of proof and persuasion to establish that it is more likely than not that she will be persecuted on account of her political opinion as a result of her opposition to China's coercive birth control policy.

While asylum and temporary withholding of removal are "closely related" forms of relief, the latter requires the alien to meet a stricter evidentiary standard. *See INS v. Cardoza Fonseca*, 480 U.S. 421, 443-50 (1987); *Zhang v. Slattery*, 55 F.3d 732, 737 (2d Cir. 1995); *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 339. Indeed, an alien's failure to meet the standards of eligibility for asylum can show that the alien is also not eligible for withholding of removal. *See Zubeda v. Ashcroft*, 333 F.3d 463, 469 (3d Cir. 2003) (citation omitted). Also, while asylum is a discretionary relief, *see* 8 U.S.C. § 1154(a), withholding of removal is a relief statutorily mandated once an alien makes a showing that he or she has a well-founded fear of persecution, or a likelihood of torture, loss of freedom, or death if forced to return to the country of removal. *See* 8 U.S.C. § 1231(b)(3)(A); *Jama v. Immigrations & Customs Enforcement*, 543 U.S. 335, 348 (2005).

In *Shao*, this Honorable Court held that the "well-founded fear" requirement of 8 U.S.C. § 1101(a)(42) is not susceptible to a construction that categorically affords or denies refugee status to all Chinese nationals with more than one child. *See Shao v. Mukasey*, 546 F.3d 138, 143 (2d Cir. 2008). This Honorable Court held that on a case-by-case basis, an asylum seeker must show: (1) the government policy implicated by the births at issue; (2) the degree to which government officials would view the births at issue as violative of that policy; and (3) that the

enforcement means that would apply to any perceived violation would amount to persecution. Id.

The Petitioner asserts that she has met her burden of proof because her credible testimony and supporting documentation provide sufficient evidence that she has a well founded fear of government-sanctioned persecution on account of her political opposition to the China's coercive birth control policy, and that the violation will subject her to punishment in her local area. She further asserts that her well founded fear of persecution is a result of her having three children in violation of China's coercive birth control policy (JA 95-96), as well as the continued threat of being forced to undergo a sterilization procedure if forced to return to China. As such, she asserts that it is more likely than not that she will be made to suffer persecution in the event that she is forced to return.

The Immigration Judge found Petitioner's testimony credible and analyzed the supporting evidence and the background reports in making her decision to grant withholding to Petitioner. The IJ carefully reviewed the country reports and cites to reports of continued enforcement of China's birth control policy, including cases of forced abortion and sterilizations. (JA 70-71). The IJ stated in pertinent parts:

> **The United States Department of State issued a country report in 2006, March 2007. The first page tells me the government continues its coercive birth control policy, in some cases resulting in forced abortion sterilization. The profile from 2005 speaks very strongly about the**

> **birth control methods in China, pages 24 and 25. It says, whether the cities or the countryside, abortion sterilization are important methods along with IUDs to implement the one child policy. It also tells me the Ministry of Health reports in 2004 there were 6.66 million IUD insertions, 14 million abortions, 1.46 million tubal ligations, 190,000 vasectomies...It also tells me the government does not publicize data on forced abortions or forced sterilizations.**

After analyzing the supporting evidence and background materials, the IJ concluded that Petitioner met her burden of proof that it is more likely than not that she will be persecuted and sterilized if forced to return to China. Id. The IJ further concluded from the background materials that Petitioner, having had three children, is clearly in violation of Chinese coercive one child population policy, and it does not matter where the children were born if both parents are Chinese citizens without legal permanent residence overseas. If Petitioner, a Chinese citizen parent returns to China with the children to reside permanently, the children will be counted for birth control purposes and violators will be persecuted, heavily penalized, jailed if unable to pay fines and sterilized.

The 2005 China: Profile of Asylum Claims and Country Conditions states:

> **Generally, unless one of the parents is an "overseas Chinese" (i.e. has residency rights in another country), a family with a**

> **U.S. born child or children receives no special treatment under family planning laws. In Fujian Province, for example, a family in which both parents are Chinese citizens would be expected to pay social compensation fees, may be required to pay extra tuition for "unauthorized" children attending school, and would be expected to conform to the restrictions in Chinese laws on future offspring....**

This country profile report was prepared by the U.S. Department of State and supports the IJ decision that Petitioner's *three United States born children* will be counted towards the birth limit if she is forced to return to live with them in China. This compelling evidence was a part of the record, and considered by the IJ before making the decision to grant withholding to the Petitioner. Thus, the IJ's decision granting withholding was supported by the record as a whole, and the BIA's subsequent reversal of that decision was made in error and should be overturned.

The BIA's error was further advanced by the Second Circuit's egregious departure from the accepted and usual course of judicial proceedings by granting Respondent's motion for summary denial of the instant petition for review which is clearly meritorious and warrants specific review.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be granted.

Respectfully submitted,

CHRISTOPHE & ASSOCIATES, P.C.

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Attorneys for Petitioner

APPENDIX

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APPENDIX A

BIA
Lamb, IJ
A099 683 205

United States Court of Appeals
FOR THE
SECOND CIRCUIT

09-0748-ag
NAC

[Filed May 18, 2010]

Xiuying Zheng,	)
Petitioner,	)
	)
v.	)
	)
ERIC H. HOLDER, Jr.,	)
United States Attorney General,	)
Respondent.	)
	)

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 18th day of May, two thousand and ten.

Present:

Dennis Jacobs,
Chief Judge,
John O. Newman,
Pierre N. Leval,
Circuit Judges.

Petitioner seeks review of an order of the Board of Immigration Appeals reversing the decision of an immigration judge, which granted her application for withholding of removal. Respondent has filed a motion for summary denial of the petition for review. Upon due consideration, it is ORDERED that Respondent's motion is GRANTED and the petition for review is DENIED. *See Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995). Petitioner's arguments are foreclosed by this Court's decision in *Jian Hui Shao v. Mukasey*, 546 F.3d 138 (2d Cir. 2008).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

/s/Catherine O'Hagan Wolfe
[seal]

APPENDIX B

[SEAL] **U.S. Department of Justice**

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Both, Kieran A., Esquire
299 Broadway, Suite 605
New York, NY 10007

Office of the District Counsel/NYC
26 Federal Plaza, Room 1130
New York, NY 10278

Name: ZHENG, XIUYING **A099-683-205**

Date of this notice: 2/5/2009

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Cole, Patricia A.
Greer, Anne J.
Pauley, Roger

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A099 683 205 - New York, NY Date:
FEB - 5 2009

In re: XIUYING ZHENG

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Kieran Both, Esquire

ON BEHALF OF DHS:
Carol Moore
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; Convention Against Torture

In a decision dated March 13, 2007, an Immigration Judge pretermitted the respondent's application for

asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, and granted the respondent's application for withholding of removal pursuant to section 241 (b)(3) of the Act, 8 U.S.C. § 1231 (b)(3). The Department of Homeland Security has appealed the grant of withholding of removal. The DHS appeal will be sustained.

The respondent, a native and citizen of China, claims to have entered the United States on January 10, 1999. She gave birth to three children, the first in 2000, the second in 2003, and the third in 2006. The respondent fears sterilization upon return to China. She also fears return because she had three children in the United States. The Immigration Judge granted withholding of removal, finding the respondent's fear of sterilization to be well-founded (I.J. at 4-6).

We find that even if the children and the respondent return to China, there is insufficient evidence that the respondent's country sterilizes its citizens for having children in foreign nations. *See Matter of J-W-S-*, 24 I&N Dec. 185, 191 (BIA 2007) (finding that the evidence of record did not demonstrate that the Chinese Government had a national policy of requiring forced sterilization of a parent who returned with a second child born outside of China, or that the applicant's province of origin persecuted those with children born abroad); *see i.e., Shao v. Mukasey*, 546 F.3d 138 (2d Cir. 2008); *Matter of S-Y-G-*, 24 I&N Dec. 247 (BIA 2007) (finding that the applicant did not meet the heavy burden show that her proffered evidence is material and reflects "changed circumstances arising in the country of nationality" to support her motion to reopen proceedings to pursue her asylum claim where the

documents submitted reflect general birth planning policies in her home province that do not specifically show any likelihood that she or similarly situated Chinese nationals will be persecuted as a result of the birth of a second child in the United States). We are in agreement with the DHS that the documents the Immigration Judge relies on to find the respondent established a well-founded fear, either do not apply to the respondent or do not support her being at risk of sterilization or abortion. In this respect, we note that none of the articles the respondent submitted deals with the treatment of Chinese citizens who have children in the United States (DHS brief at 13, 14). We also find that the respondent's fear, tied to her desire to have more children, is speculative. *See generally Sun Wen Chen v. United States Attorney General*, 491 F.3d 100 (3d Cir. 2007).

We further note that in *Matter of J-W-S-, supra*, the Board examined the 2007 report from the State Department examining Chinese country conditions (*See* Exh. 7). The report states that children born overseas are not counted for birth planning purposes when the parents return to China Moreover, the *2005 Profile* confirmed that American diplomats in China are unaware of any cases in which returnees from the United States were forced to undergo sterilization procedures on their return. *See* Bureau of Democracy, Human Rights, and Labor, United States Department of State, *China: Profile of Asylum Claims and Country Conditions;* Exh. 8 at 28 (Oct. 2005). The Board recognized the possibility of economic sanctions being imposed on Chinese citizens returning there with foreign born children but did not find that such fines and sanctions reached the level of persecution. *Matter of J-W-S-, supra.*

Additionally, we find that the respondent has not established eligibility for relief from removal, due to her alleged violation of the Chinese exit laws. *See Matter of J-W-S-, supra, at* 194-95 (noting that evidence of country conditions in 2002 and thereafter continues to reflect that persons repatriated to China generally face fines upon return and that only after a second repatriation does an individual face harsher punishment such as a possible term in a reeducation-through-labor camp). The documentary evidence submitted by the respondent is insufficient to support her claim that she would be persecuted by the Chinese government for illegally emigrating to the United States.

We note that the respondent may still qualify for withholding of removal if she can demonstrate "other resistance to a coercive population control program," such as through the expression of her opposition to the policy or through attempt to interfere with the enforcement of the policy. *See Matter of S-L-L-*, 24 I&N Dec. 1, 10 (BIA 2006); *see Shi Liang Lin v. United States Department of Justice*, 494 F.3d 296 (2d Cir. 2007). However, there is no evidence of "other resistance." The respondent has failed to satisfy the burden of proof required for withholding of removal. Section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(b). We further find that the respondent has failed to establish eligibility for protection under the Convention Against Torture, as she has not demonstrated that it is more likely than not that she would be tortured for any reason if removed to China. *See* 8 C.F.R. § 1208.16(c). Accordingly, the DHS appeal will be sustained.

ORDER: The DHS appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision granting the respondent withholding of removal is vacated and the respondent is ordered removed to China.

/s/ Roger Pauley
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW OFFICE OF THE IMMIGRATION COURT
New York, New York

File A 99 683 205

[Dated March 13, 2007]

In the Matter of)
)
XIUYING ZHENG,)
Respondent)
)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212 (a) (6) (A) of the Immigration and Nationality Act.

APPLICATION:

ON BEHALF OF RESPONDENT:

Kieran Both, Esquire

ON BEHALF OF DHS:

Asst. Chief Counsel Moore

ORAL DECISION OF THE IMMIGRATION JUDGE

This respondent is a 33-year-old, female, native and citizen of People's Republic of China who last entered the United States on or about the 10th of January near 1999. Placed in proceedings, she admits the factual allegations and concedes removal.

She is found to be removable, fails to designate a country for removal, and People's Republic of China has been directed.

She submits an application for asylum under 208 of the Act which made after the institution of proceedings is considered (indiscernible) withholding as well; and she also applies for relief under Article 3.

In order to apply for political asylum, one must apply within one year of date of entry or within any of the statutory exceptions. In this case, I feel she has failed to bear her burden of proof in order to be able to apply for political asylum, and I pretermit that application. The reason for this is she arrives in 1999, gives birth to three children, the first in 2000, the second in 2003, the third in 2006. When asked why she didn't apply for political asylum after the first child, she said because she wasn't against the law. This is true. However, she hasn't applied until after the birth of the third child which was born in 2006.

When asked why she didn't apply for asylum after the birth of the second child, which would have been, according to what she tells me, in violation of the family planning policy in China, she said she did not have time because she had to look after her children.

It's only when her mother comes to the United States and helps her care for the children that she has time to apply.

This does not fit within any of the statutory exceptions and I must pretermit her application for political asylum. She applies now for withholding.

Any applicant for withholding must demonstrate a clear probability of persecution on account of one of the enumerated grounds. This is a higher burden. She claims she will be forcibly sterilized and she is afraid to go back to China because she has three children.

The most information I have on this besides her own testimony is from United States Department of State Report October 2005. The United States Department of State issued a country report in 2006, March 2007. The first page tells me the government continues its coercive birth control policy, in some cases resulting in forced abortion sterilization. The profile from 2005 speaks very strongly about the birth control methods in China, pages 24 and 25. It says, whether the cities or the countryside, abortion sterilization are important methods along with IUDs to implement the one child policy. It also tells me the Ministry of Health reports in 2004 there were 6.66 million IUD insertions, 14,000,000 abortions, 1.46 million tubal ligations, 190,000 vasectomies. There were more in other years, but that's the numbers for 2004. It also tells me the government does not publicize data on forced abortions or forced sterilizations, and people who can sue individuals who live in China when they see the authority and use these methods to forcefully implement the birth

control policy. What the State Department report tells me, there are no known successful suits.

This report also tells me, according to Fujian Provincial Birth Planning Committee, there have been no cases of forced abortion sterilization in Fujian in the last 10 years, but they can't confirm this claim. Local physicians in contact with U.S. Consulate General in (indiscernible) report they have not seen signs of any forced abortions or sterilizations among their patients from Fujian and Guangdong Provinces since the 1980s. However, a person came to the U.S. Congress, a former birth planning official from China from the Fujian Province, and told a subcommittee of the U.S. House of Representatives that as late as June 1998 birth control offices where she worked were performing voluntary abortions and sterilizations. She also testified they carry out night time raids on homes of suspected violators and go and dismantle their homes and perform procedures on them against their will.

I think she has met her burden by these background documents to show that she has a fear of returning to China because she'll be sterilized. The background documents go on to say when couples can have as second child, if the first is handicap, if one parent is a veteran disabled, if both parents are only children, the mother's an only child, the father's a single child with military casualties, the mother is a single child in an underpopulated area. No one speaks of a third child. And as far as the children being born in the United States, generally, unless one of the parents is an overseas Chinese, the child receives no special treatment under family planning laws. In Fujian a parent in which both parents are Chinese citizens are expected to pay social compensation fees,

extra tuition for unauthorized children attending school, and conform to the restrictions of the Chinese law in future offspring. U.S. Diplomats in China are not aware of any case in which returnees from the U.S. were forced to undergo sterilizations on their return. Now what that tells me is they have to pay fees. Now social compensation fees are not persecution, in my view. However, she's testified that she is afraid if she goes back and she can't pay the fees they're going to levy on her, then she'll be thrown in jail.

This report also tells me that American citizen children traveling on American passports are not eligible for a free public education. They can go to private schools if their parents pay. It would be speculative on my part to day what would happen to the children and how much money would have to be paid if this woman is returned to China. However, I think what is not speculative, based on the background materials, is that if this woman returns to China she will be sterilized. This is because of the United States Government document. She's in violation of the family planning policy, and I don't think it matters from the background I read, where these children are born.

Fear, according to the political asylum definition, is the apprehension or the awareness of danger. She has the awareness or the apprehension of danger. There were some cases previous to this that said people cannot come here and create a claim for political asylum. This, in recent case law, is not what I'm to consider. I have to consider where she has a fear that is not just subjective, but is objective. I believe she has that fear. She meets the criteria, and I shall grant her withholding of removal. Since I'm granting

withholding of removal it is not necessary to address any relief under Article 3.

ORDER

IT IS ORDERED the respondent's application for political asylum is pretermitted.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal is GRANTED.

IT IS HEREBY ORDERED that the respondent be REMOVED from the United States to the People's Republic of China on the allegations contained in the Notice to Appear.

No decision under Article 3.

13th of March, 2007.

ELIZABETH A. LAMB
United States Immigration Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Docket No.: 09-0748-ag

[Filed June 16, 2010]

Xiuying Zheng,	)
	)
Petitioner,	)
	)
-v.-	)
	)
Eric H. Holder, Jr.,	)
United States Attorney General	)
	)
Respondent,	)
	)

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of June, two thousand and ten.

PRESENT: Dennis Jacobs,
Chief Judge,
Jon O. Newman,
Pierre N. Leval
Circuit Judges.

ORDER

IT IS HEREBY ORDERED that the Petitioner's motion for reconsideration of the order denying her petition for review, is DENIED.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk

[SEAL]
/s/Catherine O'Hagan Wolfe, Clerk

Judy Pisnanont,
Motions Staff Attorney